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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1978

NO. 78-5421

OBIE RIDDICK,

Appellant,

v.

NEW YORK,

Appellee.

ON APPEAL FROM THE NEW YORK COURT OF APPEALS

JURISDICTIONAL STATEMENT

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JURISDICTIONAL STATEMENT

Obie Riddick, appellant herein, respectfully appeals from a judgment of the Court of Appeals of the State of New York, entered July 11, 1978, affirming an order of the Supreme Court of the State of New York, Appellate Division, Second Department, entered March 28, 1977, which affirmed a judgment of the Supreme Court, Queens County, rendered September 24, 1974, convicting appellant of possession of a controlled substance in the sixth degree and sentencing him to a two and one-half to five year term of imprisonment. Appellant submits this statement to show that this Court has jurisdiction of this appeal and that a substantial question is presented.

CITATION TO OPINION BELOW

The majority and dissenting opinions of the New York Court of Appeals are officially reported at 45 N.Y.2d 300 and are annexed as Appendix A. The order and dissenting opinion in the Appellate Division, Second Department are reported at 56 A.D.2d 937, 392 N.Y.S.2d 848 and are annexed as Appendix B. The opinion of the Supreme Court, Queens County, denying appellant's motion to suppress evidence is unreported and is annexed as Appendix C.

JURISDICTION

In affirming appellant's conviction, the New York Court of Appeals sustained the constitutionality of sections 140.15 (4) and 120.80(4) and (5) of the New York Criminal Procedure Law which appellant had contended violated the Fourth Amendment. The judgment of the Court of Appeals was entered on July 11, 1978, and a copy of that court's remittitur is annexed as Appendix D. A notice of appeal to this Court was filed in the Supreme Court, Queens County, the court possessed of the record, on September 14, 1978. A copy of the notice of appeal is annexed as Appendix E. This Court's appellate jurisdiction is invoked under 28 U.S.C. §1257(2). The following decisions sustain the jurisdiction of the Court to review the judgment of the New York Court of Appeals. Bantam Books, Inc. v. Sullivan, 372 U.S. 58, 61 n. 3 (1963); Dahnke-Walker Milling Co. v. Bondurant, 257 U.S. 282, 288-90 (1921).

QUESTION PRESENTED

> Whether sections 140.15(4) and 120.80(4) and (5) of the New York Criminal Procedure Law, which authorize the police to make warrantless arrests of suspects in their homes in the absence of exigent circumstances, violate the Fourth Amendment.

CONSTITUTIONAL PROVISIONS INVOLVED

United States Constitution, Amendments IV and XIV.

STATUTORY PROVISIONS INVOLVED

New York Criminal Procedure Law §§140.15(4) and 120.80(4),(5) (McKinney's 1971):

> §140.15 Arrest without warrant; when and how made by police officer
>
> 1. A police officer may arrest a person ... at any hour of the day or night.

* * *

4. In order to effect such an arrest, a police officer may enter premises in which he reasonably believes such person to be present, under the same circumstances and in the same manner as would be authorized, by the provisions of subdivisions four and five of section 120.80, if he were attempting to make such arrest pursuant to a warrant of arrest.

§120.80 Warrant of arrest; when and how executed

* * *

4. In order to effect the arrest, the police officer may, under circumstances and in a manner prescribed in this subdivision, enter any premises in which he reasonably believes the defendant to be present. Before such entry, he must give, or make reasonable effort to give, notice of his authority and purpose to an occupant thereof, unless there is reasonable cause to believe that the giving of such notice will:

(a) Result in the defendant escaping or attempting to escape; or

(b) Endanger the life or safety of the officer or another person; or

(c) Result in the destruction, damaging or secretion of material evidence.

5. If the officer is authorized to enter premises without giving notice of his authority and purpose, or if after giving such notice he is not admitted, he may enter such premises, and by a breaking if necessary.

STATEMENT OF THE CASE

Appellant was indicted for possession of a small quantity of heroin and a hypodermic instrument following his arrest on other charges on March 14, 1974. In the course of a search incident to appellant's arrest, the arresting officers had discovered the drugs and syringe in a dresser drawer in appellant's bedroom. Appellant moved to suppress this evidence on the ground, among others, that the arresting officers had failed to obtain either an arrest or a search warrant although they had ample time to do so.

The evidence at the suppression hearing showed that the police first obtained probable cause to arrest appellant in June, 1973, when he was identified from a photographic array as the perpetrator of two robberies. At that time, appellant was on parole from an earlier conviction, and he continued on parole until February 12, 1974. Although appellant was on parole and was wanted for a robbery, the police claimed they did not actually determine his whereabouts until six months later in January, 1974. At that time they learned from appellant's parole officer that appellant lived at 127-08 165th Street, Queens. Even then, however, the police did not immediately move to make appellant's arrest, nor did they seek a warrant for his arrest or a search of his home. Rather, they waited about two more months before going to his home to arrest him.

On March 14, 1974 at about noon, three police detectives and appellant's former parole officer went to appellant's home, a two-family, wood-frame house in Queens. The parole officer entered the house first. Subsequently, he returned and signalled to the other officers that appellant was at home. One of the police officers then knocked on the front door, and appellant's three-year old son opened it. From the doorway, the officer could see appellant in his bedroom sitting in bed covered to the waist by a sheet. The officers entered and proceeded into the bedroom.

Inside the bedroom, the officers ordered appellant out of bed and discovered he was clad only in undershorts. They then searched the general area of the bed, under the mattress, under the pillow case, and inside a dresser standing a few feet away. In the top dresser drawer, the officers discovered a quantity of heroin and a hypodermic syringe. The trial court denied appellant's motion to suppress these items (App. C).

On August 19, 1974, appellant withdrew his plea of not guilty and pled guilty to criminal possession of a controlled substance in the sixth degree, New York Penal Law §220.06, in full satisfaction of the charges in this indictment. On September 24, 1974, the court sentenced him to a 2 1/2 to 5 year term of imprisonment.* By virtue of New York Criminal Procedure Law §710.70(2) appellant's plea of guilty did not waive his Fourth Amendment claim. He accordingly appealed the denial of his motion to suppress and challenged the constitutional validity of New York Criminal Procedure Law §§140.15(4) and 120.80(4),(5) which authorized the warrantless arrest in his home. The Appellate Division, Second Department affirmed his conviction on March 28, 1977 with no majority opinion. One justice dissented (App. B).

On July 11, 1973, the New York Court of Appeals, by a 4-3 vote, also affirmed appellant's conviction and upheld those provisions of the New York Criminal Procedure Law which appellant had argued violated the Fourth Amendment (App. A).** The court reasoned that the entry of a home to arrest requires no warrant, as the entry to search or seize property would, because the search involves a greater invasion of privacy than the entry to arrest, in which but a "minimal intrusion" on the home occurs (App. A at 6). The court also argued that there was a greater general governmental interest in entering homes to arrest people than in entering to search or to seize property (App. A at 7). The court did not suggest that any particular state interest justified the police officers in failing to obtain a warrant in this case. Finally, the court argued that statutes in other states as well as the English common law appeared to support its decision but noted that it was "not unmindful of considered decisions" in other courts reaching the opposite conclusion (App. A at 8).

* Subsequently, on December 5, 1974, appellant was sentenced to a term of imprisonment of from five to ten years upon his plea of guilty to the crime of attempted robbery in the first degree under Queens County indictment number 746-74. He is serving that term concurrently with the sentence imposed in this case.

** Appellant's case was decided together with another case, People v. [illegible] which raises the same issue presented here. Defendant Payton is also represented by [illegible] but because his case presents additional issues, a separate jurisdictional statement is being filed in his behalf.

In dissent, Judge Cooke wrote that "the bifurcated standard between search and arrest announced today accords an individual's bare possessions a greater quantum of protection than his very person, reviving the values of an era in which property interests were exalted over personal liberties" (App. A at 16). The judge concluded that "the constitutional guarantee that assures citizens the privacy and security of their homes unless determined otherwise by a judicial officer, applies with equal force in the case of entry to arrest a suspect as it does in the case of entry to search for property [citations omitted]" (App. A at 18).

THE QUESTION PRESENTED IS SUBSTANTIAL

This case presents the question of whether, in the absence of any exception to the Fourth Amendment's warrant requirement, police officers may enter the home of a suspect without a warrant to effect his arrest. The issue is posed squarely here, for the police made a warrantless arrest of appellant in the bedroom of his home in the complete absence of any emergency and after the passage of months in which they could have obtained a warrant for his arrest. The question presented merits full briefing and plenary review by this Court both because of its intrinsic importance and because of the sharp split of authority among state and federal courts on its proper resolution.

This Court has never decided whether warrants are required for arrests in the home, but has recognized the substantial nature of the issue in reserving it in a number of recent cases where it was not precisely presented. See United States v. Santana, 427 U.S. 38, 45 (1976) (Marshall, J., dissenting); United States v. Watson, 423 U.S. 411, 418 n. 6 (1976); Gerstein v. Pugh, 420 U.S. 103, 113 n. 13 (1975); Coolidge v. New Hampshire, 403 U.S. 443, 481 (1971); Jones v. United States, 357 U.S. 493, 499-500 (1958). The issue is important because it involves the two fundamental interests protected by the Fourth Amendment, privacy of the home and security of the person. In all other Fourth Amendment cases involving intrusions on the privacy of the home, this Court has held the intrusion to be strictly subject to the warrant requirement. Nonetheless, the New York Court of Appeals held below that entry of the home by police to seize a person is uniquely exempt from regulation by the warrant. The Court of Appeals' interpretation of the Fourth Amendment thus affords more protection to the citizen against unreasonable invasions of his home to seize his property than it affords against invasions to seize his very person. Because of the anomaly in this construction of the Fourth Amendment, and because of the fundamental interests it implicates, this case deserves plenary review.

The decision of the Court of Appeals also merits review because it is in conflict with the holdings of most courts, both state and federal, which have considered this question. Most significantly, that court's decision directly conflicts with the decision of the Court of Appeals for the Second Circuit in United States v. Reed, 572 F.2d 412 (2d Cir. 1978), which held that warrants are required, absent exigent circumstances, for felony arrests in the home. Such nonuniformity of Fourth Amendment rulings by the highest federal and state courts in New York has obvious undesirable effects on the administration of justice and requires resolution. Hincey v. Arizona, 98 S.Ct. 2408, 2419 (1978) (Marshall, J., concurring).

The Court of Appeals' decision conflicts not only with the holding of the Second Circuit, but also with the holdings of all but one other circuit to have considered the question. In the leading case, the District of Columbia Circuit held that warrants were necessary for home arrests, Dorman v. United States, 435 F.2d 385 (D.C. Cir. 1970), and subsequently, four other circuits have followed this ruling. Vance v. North Carolina, 432 F.2d 984, 990-91 (4th Cir. 1970); United States v. Shye, 492 F.2d 886, 891-93 (6th Cir. 1974); Salvador v. United States, 505 F.2d 1348,

1351-52 (8th Cir. 1974); United States v. Phillips, 497 F.2d 1131, 1135 (9th Cir. 1974). Only the Seventh Circuit has held to the contrary. United States ex rel. Wright v. Woods, 432 F.2d 1143 (7th Cir. 1970), cert. denied, 401 U.S. 966 (1971).

Among state courts, too, the larger number to have considered the question have taken the position that warrants are required for arrests in the home. See State v. Cook, 115 Ariz. 188, 564 P.2d 877 (1977); People v. Ramey, 16 Cal.3d 263, 545 P.2d 1333, 127 Cal. Rptr. 629 (In Banc), cert. denied, 429 U.S. 929 (1976); People v. Moreno, 176 Colo. 488, 491 P.2d 575 (1971); Commonwealth v. Forde, 367 Mass. 798, 329 N.E.2d 717 (1975); Laasch v. State, ___Wis.___, 23 Cr. L. Rep. 2404 (August 9, 1978); but see, State v. Perez, 277 So.2d 778 (Fla.), cert. denied, 414 U.S. 1064 (1973); People v. Eddington, 23 Mich. App. 210, 173 N.W.2d 686 (1970), aff'd, 387 Mich. 551, 198 N.W.2d 297 (1972). Of course, a large number of states, like New York, have statutes which authorize warrantless arrests in the home. See ALI Model Code of Pre-Arraignment Procedure, Appendix XI at 696 (1975). Although New York has upheld the validity of its statutes in this case, the constitutionality of those statutes and the similar ones in other states remains in doubt due to the substantial body of case law to the contrary. The widespread existence of statutes authorizing police conduct which most courts considering the issue have found to violate the Fourth Amendment confers added significance on the question presented here.

The question presented in this case, implicating as it does the fundamental interests of the Fourth Amendment in privacy of the home and security of the person, merits full briefing and plenary review by this Court.

CONCLUSION

FOR THE ABOVE REASONS, THE QUESTION PRESENTED IS SUBSTANTIAL.

Respectfully submitted,

WILLIAM E. HELLERSTEIN
Counsel for Appellant

DAVID A. LEWIS
Of Counsel
September, 1978

ALL OF THE APPENDICES ATTACHED TO THE PETITION WERE PRINTED IN MORE LEGIBLE FORM IN THE APPENDIX VOLUME TO THE COMPANION CASE, PAYTON V. NEW YORK, 78-5240 AND HAVE NOT BEEN REPRODUCED HERE.

ORIGINAL

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Appellant,

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against

THE PEOPLE OF THE STATE OF NEW YORK,

Appellees.

MOTION TO DISMISS OR AFFIRM

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In The

SUPREME COURT OF THE UNITED STATES

October Term, 1978

No. 78-5421

OBIE RIDDICK,

Appellant,

against

THE PEOPLE OF THE STATE OF NEW YORK,

Appellees.

MOTION TO DISMISS OR AFFIRM

Appellee, the State of New York, by the undersigned counsel and pursuant to Supreme Court Rule 16, subdivision 1(d), moves to dismiss or affirm on the grounds that the decision of the court below is so obviously correct as to warrant no further review.

STATEMENT OF THE CASE

Appellee has no substantial quarrel with the statement of the case contained in the Jurisdictional Statement and with the statement of facts in the opinion below.

ARGUMENT

I. The Decision of the New York State Court of Appeals was so Manifestly Correct that no Further Review is Warranted.

The New York State Court of Appeals clearly correctly sustained the constitutionality of Sections 140.15(4) and

120.80(4) and (5) of the New York Criminal Procedure Law. These statutes authorize, upon probable cause, the warrantless entry of a home by a police officer in order to make an arrest.

In so doing, the Court of Appeals left undisturbed a cardinal and, until recently, virtually unchallenged principle of law which holds that a police officer who has reason to believe that a citizen has committed a felony may effectuate an arrest of that citizen at any place or time without the necessity of obtaining a warrant. It is submitted that the decision of the court below was mandated both by principles of common law and by the Fourth Amendment of the Constitution of the United States as interpreted by the decisions of this Court. See Hale, Historia Placitorum Coronae, History of Plea of Crown [1st Amer. ed. 1847] p. 92; Chitty, Criminal Law [3d Amer. from 2d London, ed., 1836 pp. 22-23; Henry v. United States, 361 U.S. 98 (1959); Draper v. United States, 358 U.S. 98 (1959); Ker v. California, 374 U.S. 23, 34-35 (1963). Indeed, this Court "has never invalidated an arrest supported by probable cause solely because the officers failed to secure a warrant" holding that "such a requirement would constitute an intolerable handicap for legitimate law enforcement" Gerstein v. Pugh, 420 U.S. 103, 113 (1975).

In United States v. Watson, 423 U.S. 411 (1976), this Court was faced with a determination by the United States Court of Appeals for the Ninth Circuit which held unconstitutional an arrest made by United States Postal Inspectors on the grounds that no arrest warrant had been obtained. United States v. Watson, 504 F. 2d 849 (1974). The Postal Inspectors acted pursuant to statutory provisions expressly authorizing them upon reasonable cause to make felony arrests

without warrant [18 USC 3061(a)]. The Supreme Court held that: "The effect of the judgment of the Court of Appeals was to invalidate the statute as applied in this case and as applied to all situations where a court fails to find exigent circumstances justifying a warrantless arrest. We reverse that judgment." Watson, supra, at 415 (emphasis added). The Watson, supra, decision upholding the constitutionality of the aforementioned statute compelled the New York Court of Appeals to sustain the constitutionally indistinguishable statute which is the subject of the instant appeal.

It is true, of course, that the Watson decision does not expressly reach the question of whether or not, absent exigent circumstances, a police officer may make a warrantless entry of a home for purposes of effectuating an arrest. Watson, supra, at 418, fn. 6. But it is respectfully submitted that its underlying rationale, rooted as it is in the common law rule so almost universally adopted by federal and state statutes, is logically indistinguishable from the facts at bar. Neither the common law rule nor the statutes authorizing warrantless arrests draw a distinction between arrests made in public places and arrests made in homes. As Mr. Justice Marshall observed in dissent "Unless the approach of this opinion is to be fundamentally rejected, it will be difficult, if not impossible, to follow these sources to any but one conclusion - that entry to effect a warrantless arrest is permissible" Watson, supra, at 454.

In short, the Watson decision compelled the result reached below. Since the decision herein is indisputably

consistent with the Watson holding it is so "obviously correct as to warrant no further review." Stern and Gressman, Supreme Court Practice, Fifth Edition p. 535.

CONCLUSION

FOR THE FOREGOING REASONS, IT IS RESPECTFULLY SUBMITTED THAT THE CAUSE SHOULD BE DISMISSED OR AFFIRMED.

Respectfully submitted,

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for

JOHN J. SANTUCCI
Counsel for Appellee

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